

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN P. STRUTZ, :
Petitioner, : NO. 1:11-CV-00900
: :
v. : ORDER
: :
WARDEN, Lebanon Correctional :
Institution, :
: Respondent.

This matter is before the Court on the Magistrate Judge's Substituted Report and Recommendations (doc. 12) and Petitioner's objections thereto (doc. 16).

As required by 29 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has reviewed the comprehensive findings and analyses of the Magistrate Judge and considered de novo all of the filings in this matter. Petitioner's objections largely amount to objecting to the Magistrate Judge's silence with respect to Petitioner's claim that evidence that could have been tested for DNA was never tested. The Court finds Petitioner's objections unpersuasive. His claim about the lack of DNA testing could be concerning, in a vacuum. But it is not this Court's role to retry the case or to second-guess

Petitioner's trial strategy or the investigators' decision-making. The only question before this Court is whether Petitioner's federal constitutional rights were violated during the course of his trial. And, for the reasons that were set forth in the Magistrate Judge's Report and Recommendation, the Court finds that they were not. Indeed, the Court finds the Magistrate Judge's Report and Recommendation thorough, well-reasoned and correct. Accordingly, the Court ADOPTS and AFFIRMS it in its entirety (doc. 12). Consequently, Petitioner's petition for habeas corpus is DENIED WITH PREJUDICE (doc. 5) and this matter is closed on the Court's docket. The Court DECLINES to issue a certificate of appealability with respect to Petitioner's claims for relief set forth in Grounds One and Two, because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" and similarly declines to issue a certificate of appealability as to Ground Three, because Petitioner has failed to make a substantial showing of the denial of a constitutional right, and the issues presented are not adequate to deserve encouragement to proceed further. See Slack v. McDaniel, 529 U.S. 473, 475, 484-85 (2000); 28 U.S.C. § 2253(c), Fed. R. App. P. 22(b). Pursuant to 28 U.S.C. 1915(1)(c), this Court CERTIFIES that any appeal of this order will not be taken in good faith, and therefore DENIES

Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: June 18, 2013

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge